

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

CHRISTIE RENAE McCRAY	§	
v.	§	CIVIL ACTION NO. 6:12cv102
		Crim. No. 6:09cr70
UNITED STATES OF AMERICA	§	

MEMORANDUM ADOPTING REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE
AND ENTERING FINAL JUDGMENT

The Movant Christie McCray, proceeding *pro se*, filed this motion to vacate or correct her sentence under 28 U.S.C. §2255, complaining of the validity of her conviction. This Court ordered that the matter be referred to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges.

McCray was convicted on her plea of guilty of the offense of being a felon in possession of a firearm, receiving a sentence of 57 months in prison. She did not appeal her conviction, but filed this Section 2255 motion asserting that she received ineffective assistance of counsel, in that her attorney allegedly failed to request that her federal sentence be made to run concurrently with her state sentence, which she had not yet received at that time. As a result, McCray contended that she served additional time in prison and did not receive “total jail credit time.”

McCray also argued that her plea of guilty was involuntary because she acted on her counsel’s advice that her state and federal sentences would run concurrently, and that the district court denied her due process by failing to state on the record that her federal sentence would run either concurrently or consecutively to her state sentence.

The Magistrate Judge ordered the Government to answer the motion, and the Government filed a response, to which McCray did not file a reply. After review of the pleadings, the Magistrate Judge issued a Report recommending that McCray's motion to vacate or correct sentence be dismissed and that McCray be denied a certificate of appealability *sua sponte*. McCray did not file objections to the Magistrate Judge's Report; accordingly, she is barred from *de novo* review by the district judge of those findings, conclusions, and recommendations and, except upon grounds of plain error, from appellate review of the unobjected-to factual findings and legal conclusions accepted and adopted by the district court. Douglass v. United Services Automobile Association, 79 F.3d 1415, 1430 (5th Cir. 1996) (*en banc*).

The Court has carefully reviewed the pleadings in this cause and the Report of the Magistrate Judge. Upon such review, the Court has concluded that the Report of the Magistrate Judge is correct. See United States v. Wilson, 864 F.2d 1219, 1221 (5th Cir.), *cert. denied*, 492 U.S. 918, 109 S.Ct. 3243 (1989) (where no objections to a Magistrate Judge's Report are filed, the standard of review is "clearly erroneous, abuse of discretion and contrary to law."). It is accordingly

ORDERED that the Report of the Magistrate Judge (docket no. 7) is ADOPTED as the opinion of the District Court. It is further


ORDERED that the above-styled motion to vacate or correct sentence is hereby DISMISSED with prejudice. It is further

ORDERED that the Movant Christie McCray is hereby DENIED a certificate of appealability *sua sponte*. Finally, it is

ORDERED that any and all motions which may be pending in this civil action are hereby DENIED.

It is SO ORDERED.

SIGNED this 2nd day of November, 2012.


MICHAEL H. SCHNEIDER
UNITED STATES DISTRICT JUDGE